87-1687 (1)

No. 88- _____

IN THE SUPREME COURT OF THE UNITED STATES

_____Term, 1988

In re Leonard J. Zepke

Petitioner in Prohibition or Mandamus

PETITION FOR PROBITION OR MANDAMUS

To the United States Court of Appeals for the Sixth Circuit

In the matter of Leonard J. Zepke, plaintiff-appellant v Crawford & Company, defendant-appellee, Case Number 86-1745

LEONARD J. ZEPKE
Petitioner in pro per
21819 Woodbridge Street
St. Clair Shores, Mich. 48080

47P

I. Questions Presented for Review

Were the lower federal courts absent all subject matter jurisdiction in the instant case?

Petitioner says "Yes".

II. A list of parties to the proceedings in the court whose judgment is sought to be reviewed is as follows:

A. The United States Court of Appeals, Sixth Circuit

B. Crawford and Co., defendant-appellee in the matter of the case identified on the cover page.

III. TABLE OF CONTENTS

IV. INDEX TO AUTHORITIES

has subject matter jurisdiction. In the instant case, this Court has the positive duty to prohibit the lower federal Courts from exercising jurisdiction since they are absent all such by reason of the fatally defective removal petition and bond filed by defendant in the Federal District Court for the Eastern District of Michigan, Southern Division. From no other Court than this Court can the relief sought be obtained because no other than this court has superintending control over the U. S. Court of Appeals for the Sixth Circuit.

D. A concise statement of the case containing the

facts material to a consideration of the question presented are as follows: Defendant's fatally defective removal petition and bond (set forth in full in the annexed Appendix) are all the "facts" necessary to decide the sole issue involved in these proceedings.

E. Argument re no subject matter jurisdiction in the lower federal Courts.

(1) Because the removal petition is fatally defective.

(2) Because the bond is fatally defective.

ARGUMENT - INTRODUCTION

The instant proceedings before the United States Supreme Court are in the nature of mandamus proceedings to obtain a writ

of mandamus or prohibition to prevent the usurpation of jurisdiction that has occurred to date in this removal diversity case where defendant's removal petition (see Appendix page A-2" through "A-4") or bond (see Appendix pages "A-5" and "A-6") or both are so fatally defective as to fail to confer jurisdiction upon the federal district court where same were filed.

By means of the instant case the United States Supreme Court should send a message to the lower federal courts which continually complain of being bogged down with work including strictly state court matters to divest themselves of jurisdiction in diversity removal cases where the removal petition or bond or both are fatally defective in failing to set forth adequate facts so that federal jurisdiction affirmatively appears on the record at the time of removal. In the instant case,

one of the judges on the panel of the Court of Appeals which heard oral argument in the case opined that defendant's removal petition could be cured upon remand to the district court via an evidentiary hearing! He further opined that since it appeared that it could be such evidentiary hearing would not be necessary. Mentality like this pervades the federal judiciary!

Defendant's fatally defective removal petition and bond are set forth in full in the Appendix annexed hereto (see Appendix pages "A-2" through "A-6").

Plaintiff commenced a strictly state court cause of action in state court and defendant pretended to remove same to federal court though it used a fatally defective removal petition and a fatally defective bond.

In spite of the continual complaint of the federal judiciary of their being overworked from a glut of diversity removal cases, their sincerity is compromised by a case like the present where, in the absence of all jurisdiction, they decided (improperly at that, to be sure) same on its merits, whereas, they were duty bounden to deny subject matter jurisdiction and remand the case back to state court where it originated and belongs exclusively. Plaintiff's right to prosecute his state tort action in state court became vested (and incapable of being divested) 30 days after filing his strictly state court action in state court notwithstanding defendant's fatally defective removal petition and fatally defective bond.

The lower federal courts refused to decide the question. A preliminary

panel of the court of appeals (see Appendix Pages "A-8" and "A-9") said that plaintiff did not raise the question timely (as if jurisdiction cannot be raised at any time), while the panel of the court of appeals that decided the merits of the case (erroneously at that) (see Appendix Page "A-10") falsely pretended that the question did not exist.

ARGUMENT SECTION "E(1)" Re THE FATALLY DEFECTIVE REMOVAL PETITION

Defendant's removal petition is so fatally defective that the federal court has no discretion but to "refuse to proceed" in the instant case. For example, there is absolutely no averment whatsoever in defendant's removal petition as to the citizenship of the parties at the time of the commencement of plaintiff's suit in state court, to wit: On September 13, 1985. Defendant's removal petition is in the present tense and covers only the time of the filing of the petition for removal, to wit: on October 7, 1985.

It is absolutely essential that the citizenship of the parties at both critical times, be alleged; i.e., at the time of filing the petition for removal and at the time of the commecement of plaintiff's suit.

> "...an action may not be removed from a state to a Federal court on the ground of diversity of citizenship at the time of filing the petition for removal unless such diversity also existed at the time of the commencement of the suit. Gibson v. Bruce, 108 U.S. 561, 2 S.Ct. 873, 27

L.Ed. 825; Houston & Texas Central R. Co. v Shirley, 111 U.S. 358, 4 S.Ct. 472, 28 L.Ed. 455; Akers v Akers, 117 U.S. 197, 6 S.Ct. 669, 29 L.Ed. 888." p. 18 of Washington et al v Roberts & Schaefer Co. 180 F.Supp. 15.

"It appears from the record that the citizenship of the parties at the commencement of the actions, as well as at the time the petitions for removal were filed, was not sufficiently shown, and that therefore the jurisdiction of the state court was never divested. Stevens v Nichols, 130 U.S. 230, 9 S.Ct. 518; 32 L.Ed. 914; This being so, the defect cannot be cured by amendment. Crehore v Ohio & Mississippi Railroad Co., 131 U.S. 240, 9 S.Ct. 692; 33 L.Ed. 144."

Since 1958 Congress has purposely restricted the right of removal (than formerly) by amendment of the pertinent statute so that a corporation is deemed to be a citizen of "any State" in which it is incorporated or in which it has a principal place of business. Since a corporation can be incorporated in more than one state and can also have a principal place of business in more than one state, it was imperative upon defendant, in its removal petition, to negate the possibility that at both critical times (that is, at the time of commencement of

plaintiff's suit in state court as well as at the time of removal to federal court) it was not incorporated in Michigan (of which plaintiff is a citizen) as well as in Georgia and that it did not have a principal place of business in Michigan as well as in Georgia. That defendant failed to do. Defendant said absolutely nothing as to the citizenship of the parties at one of the critical times, to wit: at the time of the commencement of plaintiff's suit in state court. At the other critical time, to wit: at the time of the filing of the removal petition, defendant corporation does not negate the possibility that it was incorporated in Michigan as well as in Georgia or that it had a principal place of business in Michigan as well as in Georgia. In other words, what defendant says in its removal petition can be accepted as true, that is, that at the time of the filing of its removal petition on October 7, 1985, plaintiff was a citizen of Michigan and defendant was a citizen of Georgia without negating the possibility that on that same date

defendant was also incorporated in Michigan as well as in Georgia or that it had a principal place of business in Michigan as well as in Georgia.

What was said in Wells v Celanese Corporation of America 239 F Supp 603 is also applicable in the instant case:

> "It appears nowhere in this record that the defendant is not incorporated by Tennessee (by Michigan in the instant case) or that its principal place of business is not in Tennessee (in Michigan in the instant case); so, the possibilities existed, at both times critical to this determination, that the defendant may have been incorporated by Tennessee (in Michigan in the instant case) and may have had its principal place of business in Tennessee (in Michigan in the instant case), of which state, at both times, the plaintiff was a citizen. The necessary diversity of citizenship of the litigants, therefore, has not been pleaded, and the time for supplying corrective amendments has elapsed. F. & L.Drug Corp. v American Central Ins. Co., D.C. Conn. (1961), 200 F.Supp. 718. Therefore, this Court's jurisdiction is limited to a determination of its own jurisdiction

> and the power to remand the case to the state court whence it came if it appears that the action was removed improvidently and without jurisdiction. 28 U.S.C. Sec. 1447(c); In Re MacNeil Bros. Co., C.A.1st (1958), 259 F.2d 386; McMahon v Fontenot, D.C. Ark., (1963), 212 F.Supp. 812; Orleans Materials & Equipment Co. v Isthmian Lines Inc., D.C.La. (1963), 213 F. Supp. 325. P. 604 of Wells v Celanese et al 239 F. Supp. 603.

Likewise is the following applicable which was said in Wells v Celanese, supra:

> "For the purpose of the removal statute, 28 U.S.C. Sec. 1441(b), which governs this action, "...a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business." (emphasis supplied) 28 U.S.C. Sec. 1332(c) Thus, before the plaintiff could be deprived of the jurisdiction of the state court he selected in which to bring this action, it was essential that the defendant allege, inter alia, in its removal petition sufficient facts to demonstrate that, at both the time of the commencement of the plaintiff's action and the time the defendant filed its removal petition the plaintiff and defendant were not citizens of the same state. This is of the essence of jurisdiction in this court and, being essential, the absence of such allegations can neither be overlooked nor supplied by inference. La Belle Box Co. v Stricklin, C.C.A.6th (1914), 218 F. 529,533. P. 604 of Wells v Celanese et al 239 F. Supp. 603.

The Richmond case (Richmond F & P.R. CO. v Intermodal Services 508 F Supp 804) is to the same effect. Defendant attempts to distinguish the Richmond case by saying that the removal petition "failed to state the principal place of business of the petitioning party". But the court considered that even if the cover sheet (which stated the defendant's principal place of business at the time of the filing of the removal petition) were a part of the record, the removal petition would still be fatally defective because:

> "...it does not negate the possibility that defendant has a principal place of business in Virginia (in Michigan in the instant case) as well as in Georgia. Thus, the cover sheet does not supply the missing allegation in form or in substance required by the removal statutes. P. 808 of Richmond, F & P. R. Co. v Intermodal Services, 508 F.Supp.

The court in the Richmond case recognized that defendant's failure to "negate the possibility that defendant had a principal place of business in Virginia (in Michigan in the instant case) as well as in Georgia" was the omission

of an essential fact necessary to justify removal since the 1958 amendment makes a corporation a citizen of "any state" in which it is incorporated or has a principal place of business (and it may be incorporated in more than one state and likewise have a principal place of business in more than one state).

The court in the Richmond case cited with approval the rule that all statutory requisites of diversity jurisdiction must be alleged at least imperfectly in the original petition for removal, otherwise the petition may not be amended after expiration of the thirty (30) day removal period.

> "But where the essential facts necessary to justify removal are not alleged, either perfectly or imperfectly, then the case must be remanded. (Citations omitted). F & L Drug Corp. v American Central Ins. Co. 200 F.Supp 718. P. 806 of Richmond, F & P.R.Co. v Intermodal Services, 508 F.Supp.

Clearly, the Richmond case is indistinguishable in principle from the case at bar.

The exercise of removal jurisdiction when based on diversity is in derogation of state

sovereignity. Thompson v Gillen 491 F Supp 24. Since a removal petition functions as an ex parte divestiture of the jurisdiction of a court of general jurisdiction (in the instant case the Circuit Court for the County of Wayne) it, like the statute upon which it is based, is to be "strictly construed against removal." Shamrock Oil & Gas Corporation v Sheets 313 US 100, 108; 61 S Ct 868; 85 L Ed 1214.

In a removal petition, as distinct from an original complaint, considerations of state sovereignity, comity, and traditional judicial respect for the jurisdiction of other courts invoke the rule of caution on questions of confliction jurisdiction, Metcalf Bros. & Co. v Barker, 187 US 165, 176, 23 S Ct 67, 47 L Ed 122 (1902).

> "The course of the court is,... on its own motion to reverse a judgment for want of jurisdiction not only in cases where it is shown negatively by a plea to the jurisdiction that jurisdiction does not exist but even when

> it does not appear affirmatively that it does exist Pequignot v The Penn. Railroad Co. 16 How 104. It acts upon the principle that the judicial power of the United States must not be exerted in a case to which it does not extend, even if both parties desire to have it exerted. p. 384 of Mansfield, Coldwater et al v Swan 111 US 379; 45 S Ct 510 28 L Ed 412.

It is the duty of any federal court, trial or appellate, not to proceed with a case after defects in jurisdiction come to its attention, by motion of the parties or otherwise, until the defects have been cured. Emmons v Smith 149 F 2d 869 (CA 6).

There is always a presumption against jurisdiction. Bell v Gray 191 F Supp 328; affirmed 287 F 2d 410 (CA 6).

Questionable cases of federal removal jurisdiction should be remanded to state courts. Young Spring and Wire v American Guarantee and Liability Ins. 220 F Supp 222; Eubanks v Krispy Kreme Donut 208 F Supp 479; and Browne v Hartford Fire Ins. 168 F Supp 796.

> "Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined". P. 603 of Wells v Celanese Corp. of America, 239 F.Supp. 603.

Since the 1958 amendment requiring a "verified petition" it is the petition, by itself, which must allege sufficient facts to demonstrate that at both the time of the commencement of plaintiff's action and the time defendant filed its removal petition, the plaintiff and defendant were not citizens of the same state.

Otherwise, plaintiff cannot be deprived of the jurisdiction of the state court he selected in which to bring his action.

The pertinent law (28 USC 1332) says:

> "...a corporation shall be deemed a citizen of any state by which it has been incorporated and of the State where it has its principal place of business."

Since any corporation can be incorporated in more than one State and likewise have a

principal place of business in more than one State and the statute says "any State," it was absolutely incumbent upon defendant to cover both times critical to a removal petition (to wit: the time of commencement of plaintiff's action in state court and the time of removal of the action to federal court) and for each such time to negate the possibility that defendant has a principal place of business in Michigan as well as in Georgia and to further negate the possibility that defendant is incorporated in Michigan as well as in Georgia.

The cripple here (defendant's fatally defective removal petition) says far too little. It is in the present tense and covers only the time (October 7, 1985) it filed its removal petition; it does not cover the time of commencement of plaintiff's action (September 18, 1985)[1].

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footnote 1.

This requirement of pleading diversity at the time of commencement of plaintiff's cause of action has been in the Federal Judicial Code from ancient times. Insurance Co. v Pechner 95 US 183; 24 L Ed 422. Defendant's blaise attempt to distinguish this case (i.e., that it dealt with Sec. 12 of the Judiciary Act of 1789) is clearly inapposite.

What it says can be accepted as true, i.e., that plaintiff is a citizen of Michigan and that it is a citizen of Georgia, without negating the possibility at both times critical to the required determination (of whether plaintiff's vested right to remain in state court has been divested) that defendant is incorporated in Michigan as well as in Georgia and has a principal place of business in Michigan as well as in Georgia.

In the cases cited herein, where removal jurisdiction had to be denied on the basis of insufficient allegations in the removal petition, the courts recognize the effect of the 1958 amendment which says "any State" so that it is a missing allegation[2] for defendant not to negate the possibility of it also having (in addition to Georgia) a principal place of business in Michigan. Hence the Richmond case is indistinguishable in principle from the case at bar.

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footnote 2
which cannot be supplied by amendment. F&L Drug Corp. v American Central Ins. Co. 200 F Supp 718

Consequently, defendant's failure to state the citizenship of the parties at the time plaintiff commenced his suit in state court on September 18, 1985 is such a fatal defect in its removal petition so as to require remand of the instant case to state court. Likewise, defendant's failure to negate the possibility that at both times critical it was not incorporated in Michigan as well as in Georgia is also such a fatal defect in its removal petition as to require remand of the instant case to state court. As if the foregoing defects were not enough, defendant's failure to negate the possibility that at <u>both</u> times critical it did not have a principal place of business in Michigan as well as in Georgia is also such a fatal defect in its removal petition as to require remand of the instant case to state court.

ARGUMENT SECTION "E(2)" Re THE FATALLY DEFECTIVE REMOVAL BOND

The bond is executed by Attorney Ecclestone who is obviously without authority to bond for his client. Defendant corporation has ample agents with unquestioned authority to do this. Moreover, the bond is unilaterally limited to $250.00 and therefore does not meet the requirement of the statute to pay "all costs and disbursements" incurred by reason of the removal proceedings should it be determined that the case was not removable or was improperly removed.

A bond which does not fulfill the requirements of the statute is so fatally defective that, in principle, it is the same as no bond at all. What was said by the court in Austin v Gugan 39 Fed 626 of a "radically defective" bond is applicable here:

"In judgment the court cannot dispense with any substantial condition after the time for removal has expired, and the right of the other party has attached. For all of the various reasons indicated, a removal was not effected. The cause must therefore be remanded with costs and it is so ordered."

Similarly, in Webber v Bishop et al 13 Fed 49 it was said of a similary defective bond which did not contain the required provision as to costs:

"The defendants contend that this is a fatal omission, affecting the jurisdiction of this court; that it is not a mere irregularity, or a defect that can be cured by amendment."

"There is apparently, no distinction in principle between the case of Torrey v Grant Works and the case at bar. The reasoning in that case is decisive of the question here involved."

"The question being one of jurisdiction, the defendants can at all times take advantage of the defect. Should the case remain and the plaintiff succeed, if confronted with the same objection in the supreme court, it might lead to a reversal of his judgment."

As said in Webber, there is no distinction in principle between the Webber

case and the case at bar. The principal on the bond is Attorney Ecclestone who manifestly lacks authority to bond for his client and here the bond does not meet the requirement of the statute to pay "all costs and disbursements" without any arbitrary upper limit. In the case at bar, there is manifest lack of authority in Attorney Ecclestone to bond for his client and the bond is in defiance to the statute which requires it to pay "all costs and disbursements" without any upper limit arbitrarily selected unilaterally by the obligor.

The Power of Attorney Secretary James S. Wyllie pretends to have executed on October 7, 1985 (see Appendix pages "A-6b" through "A-6i") was physically present in the State of Michigan on that date (October 7, 1985) while he, James S. Wyllie, was physically present in the state of Pennsylvania on that date (October 7, 1985).

Thus, he could not possibly have "subscribed" and "affixed the corporate seal" on that date as falsely represented by said Power of Attorney. The invalidity of said Power of Attorney follows, ipso facto, from its falsity in pretending that it was executed on October 7, 1985 by said Wyllie (who was physically present in the state of Pennsylvania on that date) and that it was also executed on the same date by Carol Allen in Troy, Michigan and filed on the same date in a federal district court in Michigan.

WHEREFORE, the case should be dismissed and remanded to the State Court by reason of total lack of subject matter jurisdiction in the lower federal courts. The order of remand should make amends to the plaintiff for the improvident opinion on the merits expressed by the federal district court and for his losses on account of the wrongful removal.

Respectfully submitted,

Leonard J. Zepke,
Petitioner in pro per

VII. APPENDIX

Page

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEONARD J. ZEPKE,

Plaintiff

vs.

CRAWFORD & COMPANY, a
Georgia Corporation,

Defendant

_____/

PETITION FOR REMOVAL

TO: JUDGES OF THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

Defendant, CRAWFORD & COMPANY, a Georgia corporation, by and through its Attorneys, Ecclestone, Moffett & Humphrey, P.C., hereby petitions this Court pursuant to 28 USC 1441 for Removal of this cause to the United States District Court for the Eastern District of Michigan, Southern Division, and in support thereof states:

1. That on or about September 18, 1985, an action was commenced against the Petitioner

in the Circuit Court for the County of Wayne, State of Michigan, entitled:

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

LEONARD J. ZEPKE,
Plaintiff

No. 85 524 346 CZ
Hon. Arthur Bowman

vs.

CRAWFORD & COMPANY,
Defendant

2. That a copy of the Summons and Complaint were served upon Crawford & Company's resident agent, CT Corporation System, on or about September 20, 1985. A copy of the Summons and Complaint in the Wayne County Circuit Court action is attached hereto and incorporated herein by reference.

3. That the Petitioner, Crawford & Company, is a Foreign Corporation, incorporated in the State of Georgia, with its principal place of business in Atlanta, Georgia, and, accordingly, is a citizen for the State of Georgia, for the purposes of Federal Court jurisdiction.

4. That the Plaintiff, LEONARD J. ZEPKE, is, upon information and belief, a citizen of

the City of St. Clair Shores, County of Macomb, and State of Michigan.

5. That by virtue of Paragraph 2, in the attached Complaint issued by the Plaintiff, it is asserted that the controvery in this matter exceeds Ten Thousand and 00/100 Dollars ($10,000.00).

6. That this Honorable Court has original jurisdiction in this cause based on diversity of citizenship between the Plaintiff and Defendant and removal is proper pursuant to 28 USC 1441.

WHEREFORE, Petitioner prays that the entitled action now pending in the State of Michigan, Circuit Court for the County of Wayne, be removed to the United States District Court, Eastern District of Michigan, Southern Division.

ECCLESTONE, MOFFETT & HUMPHREY, P.C.

BY_____

DATED: October 7, 1985

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEONARD J. ZEPKE,

Plaintiff

vs.

CRAWFORD & COMPANY, a
Georgia Corporation,

Defendant

_____/

BOND FOR REMOVAL

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

KNOW ALL MEN BY THESE PRESENTS that we, CRAWFORD & COMPANY, As Principal, and THE INSURANCE COMPANY OF NORTH AMERICA, A Pennsylvania Corporation, As Surety, are held and firmly bound unto LEONARD J. ZEPKE, in the amount of TWO HUNDRED FIFTY and 00/100 DOLLARS ($250.00) for the payment of which well and truly be made, we, and each of us, bind ourselves, our successors, and assigns, jointly and severally, by these presence.

WHEREAS, the said CRAWFORD & COMPANY, has petitioned the United States District Court for the Eastern District of Michigan, Southern Division, for the Removal to said court an action now pending in the Wayne County Circuit Court of the State of Michigan, in and for the County of Wayne, wherein LEONARD J. ZEPKE, is the Plaintiff and CRAWFORD & COMPANY, a Georgia Corporation, is the Defendant, and being numbered civil action #85-524-346 CZ, upon the docket thereof;

NOW, THEREFORE, the condition of the above obligation is such that said CRAWFORD & COMPANY shall pay all costs and disbursements incurred by reason of said removal proceedings if it should be determined that the said action was not removable or was improperly removed.

WITNESS OUR HANDS AND SEALS this 7th day of October, 1985.

INSURANCE COMPANY OF NORTH AMERICA
A Pennsylvania Corp.
By: Carol ALlen

CRAWFORD & COMPANY, a Georgia Corporation

By_____
FREDERICK G. ECCLESTONE
ECCLESTONE, MOFFET ET AL, P.C.
Its Attorneys

N.B. On pages 6d through 6i is set forth in readable type the full text of the Power of Attorney (reproduced on page ("A-6c" following) filed by Crawford and Company with its fatally defective removal bond.

POWER OF ATTORNEY

Insurance Company of North America
a CIGNA company

CIGNA

Know all men by these presents: That **INSURANCE COMPANY OF NORTH AMERICA**, a corporation of the Commonwealth of Pennsylvania, having its principal office in the City of Philadelphia, Pennsylvania, pursuant to the following Resolution adopted by the Board of Directors of the said Company on March 23, 1977, to wit:

RESOLVED, pursuant to Articles 3.6 and 5.1 of the By-Laws, the following Rules shall govern the execution for the Company of bonds, undertakings, recognizances, contracts and other writings in the nature thereof:

(1) That the President, or any Executive Vice President, Senior Vice President, Vice President, Assistant Vice President, Resident Vice President or Attorney-in-Fact, may execute for and in behalf of the Company any and all bonds, undertakings, recognizances, contracts and other writings in the nature thereof, the same to be attested when necessary by the Secretary or a Resident Secretary, an Assistant Secretary or a Resident Assistant Secretary and the seal of the Company affixed thereto, and that the President, or any Executive Vice President, Senior Vice President, or Vice President may appoint and authorize Assistant Vice Presidents, Resident Vice Presidents, Secretaries, Resident Secretaries, Assistant Secretaries, Resident Assistant Secretaries and Attorneys-in-Fact to so execute or attest to the execution of all such writings on behalf of the Company and to affix the seal of the Company thereto;

(2) Any such writing executed in accordance with these Rules shall be as binding upon the Company in any case as though signed by the President and attested by the Secretary;

(3) The signature of the President, or an Executive Vice President, or Senior Vice President, or Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted pursuant to this Resolution, and the signature of a certifying officer and the seal of the Company may be affixed by facsimile to any certificate of any such power, and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company;

(4) Such Assistant Vice Presidents, Secretaries, Assistant Secretaries, Resident Officers and Attorneys-in-Fact shall have authority to certify or verify copies of this Resolution, the By-Laws of the Company, and any affidavit or record of the Company necessary to the discharge of their duties;

(5) The passage of this Resolution does not revoke any earlier authority granted by Resolutions of the Board of Directors adopted on June 9, 1955 and May 28, 1976.

does hereby nominate, constitute and appoint CAROL A. ALLEN, J.K. TRANZOW, L.P. MARVIN, T.A. TORZEWSKI, JOHN F. GARDINER,JR., WILLIAM J. REUTTER, WILLIAM A. PIRRET, and RICHARD G. THOMAS, all of the City of Troy, State of Michigan

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, each individually if there be more than one named, its true and lawful attorney-in-fact, to make, execute, seal and deliver on its behalf, and as its act and deed any and all bonds, undertakings, recognizances, contracts and other writings in the nature thereof. And the execution of such writings in pursuance of these presents, shall be as binding upon said Company, as fully and amply as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office.

IN WITNESS WHEREOF, the said H. F. MC CRANIE, JR. Vice-President, has hereunto subscribed his name and affixed the corporate seal of the said **INSURANCE COMPANY OF NORTH AMERICA** this 25th day of October 19 83

(SEAL)

INSURANCE COMPANY OF NORTH AMERICA

by H. F. McCranie, Jr.
H. F. MC CRANIE, JR. Vice President

STATE OF PENNSYLVANIA
COUNTY OF DELAWARE ss.

On this 25th day of October A.D. 19 81, before me, a Notary Public of the COMMONWEALTH OF PA in and for the County of DELAWARE came H. F. MC CRANIE, JR. Vice-President of the **INSURANCE COMPANY OF NORTH AMERICA** to me personally known to be the individual and officer who executed the preceding instrument, and he acknowledged that he executed the same, and that the seal affixed to the preceding instrument is the corporate seal of said Company; that the said corporate seal and his signature were duly affixed by the authority and direction of the said corporation, and that Resolution, adopted by the Board of Directors of said Company, referred to in the preceding instrument, is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at the City of RADNOR the day and year first above written.

(SEAL)

NOTARIAL SEAL
ANNE W. COSGROVE, Notary Public
Bryn Mawr, Delaware County, PA
My Commission Expires Sept. 21, 1982

ANNE W. COSGROVE Notary Public

My commission expires

I, the undersigned, Assistant Secretary of **INSURANCE COMPANY OF NORTH AMERICA**, do hereby certify that the original POWER OF ATTORNEY, of which the foregoing is a full, true and correct copy, is in full force and effect.

In witness whereof, I have hereunto subscribed my name as Assistant Secretary, and affixed the corporate seal of the Corporation, this 7th day of October 19 83

(SEAL)

JAMES A. WYLLIE Assistant Secretary

85-15678a Ptd in U.S.A.

THIS DOCUMENT PRINTED ON RED BACKGROUND

POWER OF ATTORNEY INSURANCE COMPANY OF NORTH AMERICA, A CIGNA COMPANY

Know all men by these presents: That INSURANCE COMPANY OF NORTH AMERICA, a corporation of the Commonwealth of Pennsylvania, having its principal office in the City of Philadelphia, Pennsylvania, pursuant to the following Resolution adopted by the Board of Directors of the said Company on March 23, 1977, to wit:

"RESOLVED, pursuant to Articles 3, 6 and 5.1 of the By-Laws, the following Rules shall govern the execution for the Company of bonds, undertakings, reconizances, contracts and other writings in the nature thereof:

(1) That the President, or any Executive Vice President, Senior Vice President, Vice President, Assistant Vice President, Resident Vice President or Attorney in Fact, may execute for and

in behalf of the Company any and all bonds, undertakings, recognizances, contracts and other writings in the nature thereof, the same to be attested when necessary by the Secretary, or a Resident Secretary, an Assistant Secretary or a Resident Assistant Secretary and the seal of the Company affixed thereto; and that the President, or any Executive Vice President, Senior Vice President, or Vice President may appoint and authorize Assistant Vice Presidents, Resident Vice Presidents, Secretaries, Resident Secretaries , Assistant Secretaries, Resident Assistant Secretaries and Attorneys-in-Fact execute or attest to the execution of all such writings on behalf of the Company and to affix the seal of the Company thereto.

(2) Any such writing executed in accordance with these Rules shall be as binding

upon the Company in any case as though signed by the President and attested by the Secretary.

(3) The signature of the President, or an Executive Vice President, or Senior Vice President, or Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted pursuant to this Resolution, and the signature of a certifying officer and the seal of the Company may be affixed by facsimile to any certificate of any such power, and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company.

(4) Such Assistant Vice Presidents, Secretaries, Assistant Secretaries, Resident Officers and Attorneys-in-Fact shall have authority to certify or verify copies of this Resolution, the By-Laws

of the Company, and any affidavit or record of the Company necessary to the discharge of their duties.

(5) The passage of this Resolution does not revoke any earlier authority granted by Resolutions of the Board of Directors adopted on June 9, 1953 and May 28, 1975."

does hereby nominate, constitute and appoint CAROL A. ALLEN, J.K. TRANZOW, L.P. MARVIN, T.A. TORZEWSKI, JOHN F. GARDINER, JR., WILLIAM A. PIRRET, and RICHARD G. THOMAS, all of the City of Troy, State of Michigan, each individually if there be more than one named, its true and lawful attorney-in-fact, to make, execute, seal and deliver on its behalf, and as its act and deed any and all bonds, undertakings, recognizances, contracts and other writings in pursuance of these presents, shall be as binding upon said Company, as fully and amply as if they had been duly executed and acknowledged by the regularly elected officer of the Company at its principal office.

IN WITNESS WHEREOF, the said H. F. MC CRANIE, JR., Vice-President, has hereunto subscribed his name and affixed the corporate seal of the said INSURANCE COMPANY OF NORTH AMERICA this 25th day of October 1983.

(SEAL)

INSURANCE COMPANY OF NORTH AMERICA

by /s/
H.F. MC CRANIE, JR.
Vice President

STATE OF PENNSYLVANIA

COUNTY OF DELAWARE ss.

On this 25th day of October, A.D. 1983, before me, a Notary Public of the COMMONWEALTH OF PA in and for the County of DELAWARE came H.F. MC CRANIE, JR., Vice-President of the INSURANCE COMPANY OF NORTH AMERICA to me personally known to be the individual and officer who executed the preceding instrument, and he acknowledged that he executed the same, and that the seal affixed to the preceding instrument is the corporate seal of said Company; that the said corporate seal and his signature were duly affixed by the authority and direction of the said corporation, and that Resolution

adopted by the Board's Directors of said Company, referred to in the preceding instrument, is now in force.

INTESTAMONY WHEREOF, I have hereunto set my hand and affixed my official seal at the City of RADNOR the day and year first above written.

(SEAL)

/s/
ANNE W. COSGROVE
Notary Public

I, the undersigned, ~~Assistant~~ Secretary of INSURANCE COMPANY OF NORTH AMERICA, do hereby certify that the original POWER OF ATTORNEY, of which the foregoing is a full, true and correct copy, is in full force and effect.

In witness whereof, I have hereunto subscribed my name as ~~Assistant~~ Secretary, and affixed the corporate seal of the Corporation this 7th day of October 1985.

(SEAL)

/s/
JAMES S. WYLLIE
~~Assistant~~ Secretary

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
DETROIT, MICHIGAN

LEONARD J. ZEPKE,

Plaintiffs,

V

CRAWFORD & COMPANY,

Defendants,

_____/

Civil Action No.
85-4644

JUDGMENT

At a SESSION of said Court, held in the City of Detroit, State of Michigan, on August 11, 1986 .

PRESENT: THE HONORABLE GEORGE E. WOODS, UNITED STATES DISTRICT JUDGE

The Court having issued an Order Granting Summary Judgment in favor of Defendant, Crawford & Company, now, therefore,

IT IS HEREBY ORDERED AND ADJUDGED that defendant's Motion for Summary Judgment is Granted and plaintiff's complaint is DISMISSED.

So ordered.

TO: WILLIAM L. FISHER & FREDERICK G. ECCLESTONE, Esq.

_____
GEORGE E. WOODS, UNITED STATES DISTRICT JUDGE

No. 86-1745

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Leonard J. Zepke,

Plaintiff-Appellant,

V.

ORDER

Crawford & Company,

Defendant-Appellee

/

BEFORE: KEITH, KRUPANSKY and GUY, Circuit Judges

Plaintiff Zepke moves to vacate the summary judgment granted by the district court below for lack of diversity jurisdiction and to remand the case to state court for further proceedings. Although styled as a motion to vacate, plaintiff's motion is clearly an untimely attempt to appeal from the district court's order of April 9, 1986 which denied his motion to remand. Fed. R. App. P. 4(a)(1). Plaintiff argued in the court below and again in his motion that removal was improvidently granted because defendant had a principal place of

business in Michigan, the plaintiff's home state. We do not reach that issue because an untimely appeal deprives the Court of jurisdiction. Browder v Director, Ill. Dept. of Corrections, 434 U.S. 257 (1978); E.E.O.C. v K-Mart Corp., 694 F 2d 1055 (6th Cir. 1982).

It is ORDERED that the motion to vacate the judgment and to remand the case to state court for further proceedings is denied. It is further ORDERED that plaintiff's motion to stay proceedings in district court is denied.

ENTERED BY ORDER OF THE COURT

_____
Clerk

No. 86-1745

UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

LEONARD J. ZEPKE,

Plaintiff-Appellant,

V.

CRAWFORD & COMPANY,

Defendant-Appellee

_____/

On Appeal from the United States District Court for the Eastern District of Michigan.

BEFORE: ENGEL and KENNEDY, Circuit Judges; and EDWARDS, Senior Circuit Judge.

PER CURIAM: Plaintiff-Appellant Leonard J. Zepke appeals from the District Court's granting of summary judgment to defendant Crawford and Company in his diversity tort action.

Upon consideration of the entire record and the briefs filed herein, we affirm the order of the District Court of April 9, 1986 accepting the report of the Magistrate, and the judgment of the District Court for the reasons stated by Judge Woods on August 7, 1986.